Nos. 27, 41

In the Supreme Court of the United States

OCTOBER TERM, 1943

General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Pacific Lines of Southern Pacific Company (an unincorporated association),

Petitioner,

vs.

Southern Pacific Company, a corporation, and General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen (an unincorporated association),

Respondents.

No. 27

General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen (an unincorporated association),

Petitioner,

vs.

General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Pacific Lines of Southern Pacific Company (an unincorporated association), and Southern Pacific Company, a corporation,

Respondents.

No. 41

Brief for Southern Pacific Company, Respondent

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Brief for Southern Pacific Company, Respondent

OPINION BELOW

The opinion of the Circuit Court of Appeals for the Ninth Circuit (R. 792-826) is reported in 132 F.(2d) 194.

The trial court (The United States District Court for the Northern District of California) entered special findings of fact and conclusions of law (R. 44-57), but rendered no opinion.

JURISDICTION

The jurisdiction of this Court in this cause has been invoked by the Petitioners under Section 240(a) of the Judicial Code (28 U.S.C. 347).

STATUTES INVOLVED

The statutes principally involved are:

The Railway Labor Act, as amended June 21, 1934 (45 U.S.C. 151-163, inclusive); and

The Declaratory Judgments Act of 1934 (28 U.S.C. 440).

These acts are printed in full in Appendix A to the brief for the petitioner in Number 27; the text of the Railway Labor Act is likewise reproduced as an appendix to the brief for the United States as amicus curiae. To save repetition, a further reprint of the statutes as an appendix to this brief is therefore omitted.

STATEMENT

This brief is presented on behalf of Southern Pacific Company, respondent in numbers 27 and 41, and is directed to the issues raised in both of those dockets, inasmuch as they arise upon a common record and involve the same case in both the district and circuit courts.

Although the facts are reviewed in considerable detail in the briefs for both petitioners (brief of Engineers' Committee in No. 27, pages 2-17; brief of Firemen's Committee in No. 41, pages 2-12), and also in the brief for the United States (at pages 3-8, 12-18), we believe that a short summary is desirable, so that our position in the case may be fully understood.

Southern Pacific is a railroad common carrier, and as an employer of railroad labor is subject to the Railway Labor Act. In accordance with that statute it has entered into a collective bargaining agreement with the Engineers' Committee, as the craft representative of the locomotive engineers in its employ, covering the rates of pay and working conditions of such engineers. That agreement, for convenience called the Engineers' Schedule, is in evidence as Exhibit 1 (R. 111, 326-467). A corresponding agreement with the Firemen's Committee, as the craft representative of the locomotive firemen, similarly covers the rates of pay and working conditions of those employees, and is in evidence as Exhibit 2 (R. 111, 468-636).

The crafts of locomotive engineers and firemen employed by Southern Pacific, although treated as distinct for purposes of representation and collective bargaining, are in fact closely related, and have many common interests. All

firemen are potential engineers, and are required by rule to qualify for promotion in their turn, or to forfeit substantially all their acquired seniority. Many are already qualified and are called to service as engineers as vacancies occur. Nearly all engineers are former firemen, and all hold firemen's seniority. As traffic fluctuates in volume, and the need for engine service increases or falls away, men are drawn from the firemen's ranks to the ranks of engineers, or are returned from the ranks of engineers to the ranks of firemen. In times of very light traffic it is possible that all of the firemen in regular service may be qualified as engineers and hold engineers' seniority; as traffic increases all or most of these men will be returned to the engineers' working lists from which they, or some of them, will again revert as traffic recedes. When engineers are demoted to firing service they become senior firemen and displace other firemen, their juniors, who are then left without employment.

The Engineers' Committee, petitioner in No. 27, and plaintiff in the action as originally commenced in the district court, is created by and acts under authority of the Brotherhood of Locomotive Engineers; while the Firemen's Committee, cross-petitioner in No. 41 and the intervening defendant in the district court, acts by authority of the Brotherhood of Locomotive Firemen and Enginemen. These two labor organizations draw their membership from a common source, and are in constant and energetic rivalry with each other. Each brotherhood seeks to preserve and enlarge its membership, and to obtain and hold for itself and its members every advantage possible.

The case at bar constitutes simply one phase of that continuing competitive struggle, for it represents an effort of the Engineers' Committee, as the agency of the Engineer's Brotherhood, to obtain an authoritative interpretation of the Railway Labor Act which will render membership in that brotherhood much more desirable and valuable, if not virtually compulsory, for every engineer employed by Southern Pacific; and will at the same time destroy much if not all of the value which engineers may derive from membership in the Firemen's Brotherhood. The Firemen's Committee, on the other hand, naturally opposes this endeavor of the Engineers' Committee, and seeks instead to preserve existing usages and procedures under the Act and to protect the value of its membership for those of its members who have been or are employed as engineers. It will be borne in mind that many of the engineers employed by Southern Pacific retain membership in the Firemen's Brotherhood; and the record also suggests that at times there may be men working as firemen who are members of the Engineers' Brotherhood.

It should be clearly understood that Southern Pacific, as the employer, does not and cannot have any partisan interest in the membership rivalry of the two brotherhoods. Under Paragraphs Fourth and Fifth of Section 2 of the Act, it is forbidden to question the right of any employee to join the labor organization of his choice or to require any employee as a condition of employment to join or refrain from joining any organization. The Act not only does not permit, but especially condemns any "closed-shop" agreement, being, in that respect, as in

many others, wholly different from the National Labor Relations (Wagner) Act. The carrier's primary interest is in the maintenance of harmonious relations with both organizations and the individual employees which they represent, regardless of the rivalry between them, to the end that there may be no interruption of essential transportation service, through lack of a sufficient number of engine men qualified to perform that service. The paramount obligation to protect the public service rests not only upon the employer, but also and very plainly upon the employees, and the Brotherhoods which represent them.

However, Southern Pacific is not to be regarded as a mere neutral in this case. Though it does not favor either brotherhood as such, it here takes a position opposed to the contentions of the Engineers' Committee: for it believes and maintains that its agreement with the Firemen's Committee is lawful and valid in all respects; that the district court properly so held; and that the circuit court's decision, to the extent that it affirmed the holding of the district court, was correct. While the position taken by the Firemen's Committee is generally the same as our own, it is acting in its own independent right and interest, so far as Southern Pacific is concerned; for it neither controls nor is controlled by the carrier.

THE QUESTIONS PRESENTED

The petition of the Engineers' Committee in No. 27 is addressed to the conclusions set forth by the Circuit Court in Part A of its opinion (R. 792-815; 132 F.(2d) at pages

195 to 202), and its affirmance of the findings and conclusions of the district court, relating to the right of the Firemen's Committee to represent its individual members, or other individuals, in the presentation, handling, and settlement of their individual disputes and grievances arising out of their employment as locomotive engineers of Southern Pacific.

Although the Engineers' Committee has preferred to divide the question thus presented (its brief, pp. 20-21), it can really be summarized as a single question, as follows:

> Does the Railway Labor Act, or the Engineers' Agreement, prohibit the Firemen's Committee and the employer from incorporating in the Firemen's Schedule a provision that the Firemen's Committee may represent an engineer belonging to the Firemen's Brotherhood, or any other individual who may desire the Firemen's Committee to act as his representative, in presenting, adjusting, and handling to a conclusion, a personal dispute with the employer arising out of a grievance or out of the interpretation or application of the working agreement applying to his employment as an engineer, or prohibit the Firemen's Committee from undertaking such representation?

The petition of the Firemen's Committee in No. 41 is addressed to the conclusions arrived at by the Circuit Court in Part B of its opinion (R. 816-826), and particularly its holdings (1) that the mileage provisions contained in Article 43 of the Firemen's Schedule (R. 604-608) do not prescribe rules for the restoration of demoted

men to the ranks of engineers, as a condition of the exercise by such demoted engineers of the privilege of becoming and remaining firemen, and thereby displacing junior firemen from their jobs; and (2) that the provisions relating to the calling of firemen for service as emergency engineers (R. 587) are invalid in so far as they "relate to the entry of a fireman into the craft of engineers" (R. 826).

As in No. 27, the essential issues presented in No. 41 can be expressed in a single question, as follows:

> Does the inclusion, within and as a part of the Firemen's Schedule, of rules setting forth conditions as to employment and opportunity for employment as engineers, which must exist and be complied with, in order that the individual members of the engineers' craft may revert to or continue in firing service when unable to work as engineers, and in consequence displace junior firemen, violate the Railway Labor Act, or infringe any right of the Engineers' Committee as the craft representative of the engineers' craft?

As already noted, the district court in its findings and conclusions answered both of the above questions in the negative (see Findings 8, 10, 11, 13, 14; Conclusions 2, 3, 4, 5; R. 50-53, 55-57). While the Circuit Court clearly answered the first in the negative, and appeared to make the same answer to the second, it so qualified the latter answer as to leave its precise conclusion in doubt; and moreover, it modified (R. 826) the conclusion of the trial court as to the validity of the provisions relating to the calling of firemen for service as emergency engineers. It

is our position that the district court was correct, and that in qualifying and modifying its judgment and decree to the extent indicated, the Circuit Court erred.

In addition to the primary questions presented by the petitioners, there are also certain questions which this Court has requested the parties to discuss, as follows:

(1) Whether resort to the declaratory judgment procedure is appropriate in the circumstances;

(2) Whether any questions of the construction of the contracts involved are governed by state or federal law; and

(3) What bearing, if any, the Norris-LaGuardia Act has on the propriety of granting the relief sought.

SUMMARY OF ARGUMENT

I.

THE REPRESENTATION ISSUE (No. 27).

Two classes of disputes between an employer (carrier) and its employees are recognized in the Railway Labor Act: (1) those relating to wages and working conditions for a craft or class of the employees generally, and (2) those which arise out of the interpretation or application of agreement provisions to the service of a particular employee, or group of employees. The latter are generally termed "grievances".

While the craft representative has the exclusive right to handle with the employer all disputes of the first class, an individual employee involved in a dispute of the second class may be represented by any person or organization of his choice, including an organization other than the craft representative, in having his grievance handled to a conclusion. Such right of individual representation in grievance cases does not infringe the rights of the craft representative, nor imperil any of the established rights of the craft itself. Such right was in effect recognized by this Court in *Virginian Railway Co. v. System Federation*, 300 U.S. 515, and has also been consistently recognized by tribunals functioning under the Act.

The petitioner's contention, if sustained, would impose virtually a "closed shop" upon engineers employed by the carrier: a condition which the Act prohibits. In that respect, as in others, the Act is quite distinct from the National Labor Relations Act. The latter statute has

no application in the premises; and decisions interpreting or applying its provisions, such as cited by petitioner, are of little or no value as authorities herein.

II.

THE ISSUES RELATING TO THE MILEAGE LIMITATION AND DISPLACEMENT PROVISIONS OF THE FIREMEN'S SCHEDULE (No. 41).

Article 43, Sections 1, 2, 3, 4, and 6 of the Firemen's Schedule, create a privilege whereby "demoted" engineers may return to firing service and displace firemen from their jobs; these provisions also attach certain conditions to the exercise of that privilege.

The Firemen's Committee concededly has the sole right to agree with the carrier as to the conditions under which demoted engineers may become and remain firemen. One such condition is that demoted men shall not continue as firemen, but will be restored to service as engineers, in seniority order, whenever it is shown that they can earn reasonable "mileage" as engineers, and their addition to the engineers' working lists will not reduce the "mileage" of the other engineers below reasonable levels. This condition operates to control the reëmployment of demoted men as engineers, but such control is not against the will or without the concurrence of the engineers as a group. While engineers could avoid such "control" by abandoning the displacement privilege, they do not wish to, because the privilege is very valuable to both the craft and the individual engineers.

The Circuit Court erred in indicating that such "control" is improper or unlawful as a condition annexed by the firemen, with the carrier's concurrence, to the exercise of the displacement privilege.

The Circuit Court likewise erred in modifying the trial court's decree with respect to the validity of the questions and answers under Article 37, Section 15, of the Firemen's Schedule. The latter provisions are simply a protection of the seniority rights and guaranteed earnings of demoted engineers, who, while holding regular jobs as firemen, are called for temporary emergency service as engineers, and are reasonably necessary for that purpose. They do not interfere with the "control" by the Engineers' Committee of the working conditions of such men while serving as engineers.

III.

REQUESTED DISCUSSION

(a) The declaratory judgment procedure was properly resorted to, there being an actual controversy between the parties over the interpretation and validity of certain statutory and contractual provisions, and no reason of comity, or otherwise, for the discretionary denial of declaratory relief. No administrative tribunal exists under the Railway Labor Act to which prior resort should have been had.

(b) The question of the construction of the contracts involved should be decided under Federal, rather than state law; there having been a Federal occupancy of the field of such interpretation, by reason of the Railway

Labor Act. Furthermore, since the contracts are intended to be performed in several states, uniformity of construction on the basis of Federal law is essential.

(c) No injunctive relief being demanded, the Norris-LaGuardia Act has no application. Moreover, since the suit is in essence for the protection of the petitioner's claimed exclusive right of craft representation, said Act would not bar injunctive relief if the right thereto were otherwise established.

ARGUMENT

I.

THE REPRESENTATION ISSUE (No. 27).

(a) Contentions of the Engineers' Committee Summarized.

The argument of the Engineers' Committee, petitioner in No. 27, upon the primary issues presented in that proceeding, is framed in the form of a challenge to the holding of the Circuit Court (R. 815) sustaining the findings and conclusions of the District Court (Findings 7, 8; Conclusions 2, 5(c); R. 48-50, 56-57) which in substance declare that the Firemen's Brotherhood has the right to represent its engineer members, and any other individual engineers who may desire such representation, in handling to a conclusion their individual claims and grievances arising out of their employment as engineers of Southern Pacific; that the right of the Engineers' Committee to represent the craft or class of engineers employed by Southern Pacific is not thereby infringed; and that Article 51, Paragraph 1, of the Firemen's Schedule (R. 616) is therefore not unlawful in expressly stating that an engineer, in common with certain other classes of employes, may have his own organization represent him in handling his grievances.

Petitioner's argument, though somewhat extended by references to and quotations from various other discussions, many of which are of doubtful authority and have but little relation to the point, is capable of being condensed into one paragraph, as follows:

> "The Engineers' Committee is the representative of the craft of locomotive engineers in the carrier's

employ, having been duly selected by a majority of the craft. In that capacity, it has the exclusive right, under the Railway Labor Act, to represent the craft in all dealings with the employer relating to existing or proposed rates of pay, rules or working conditions of the engineers' craft as a whole. Further, because it is the exclusive craft representative, it also has the sole right to represent individual engineers in presenting to the employer the individual disputes or grievances of such engineers arising out of their engineer employment, if the interpretation or the application of the Engineers' Schedule is involved in the dispute; and has the further exclusive right to handle such disputes or grievances to a conclusion under the procedures provided by the Act, including presentation to the National Railroad Adjustment Board, if direct settlement with the employer cannot be effected. This claimed exclusive right is infringed if any other representative is permitted to appear for individual engineers in the handling of such disputes or grievances with the employer, or otherwise pursuant to the Act, because the integrity of the Schedule itself is thereby threatened. It is not contended that an individual engineer may not present his own grievance, or that he may not act through a representative other than the Engineers' Committee, if he pursues his remedy through avenues other than those provided by the Act; but if he is to be represented in any procedure or handling under the Act, only the Engineers' Committee may be his representative."

(b) Two Distinct Classes of Disputes Between Employer and Employees Are Recognized by the Railway Labor Act.

A proper understanding of the essentials of the representation issue will be made easier if it is first made clear

that two distinct classes of disputes between an employer and its employees are recognized in the Act.

Disputes of the *first* class arise when rules or wages affecting an entire craft are proposed to be established or modified, and the employer and employee representatives fail to agree. Such disputes are subject to negotiation and handling, in so far as the employees are concerned, exclusively by the duly chosen representative of the craft involved.

A dispute of the *second* class arises when an individual employee, who has performed, or claims the right to have performed, service as a member of a craft under a particular craft agreement, presents to the employing carrier a request that the latter comply with some rule of the agreement claimed by the employee to be applicable in the premises. Generally the request is for payment of additional wages asserted to be due for the service performed, or which should have been performed according to the employee; occasionally some other claim under the agreement is made. The carrier's refusal to comply creates the dispute.

No issue arises in this case as to petitioner's exclusive right, as the representative selected by the majority of the engineers in the carrier's employ, to represent the craft ("all engineers") in disputes of the first class. The question at issue is whether petitioner also has the sole right to represent an individual engineer, to the exclusion of the Firemen's Committee, when an individual dispute or grievance of the second class is handled under the Act.

The gist of petitioner's argument is simply that there is no essential difference between the two classes of disputes; that when an individual claim arises under an agreement and is in dispute, so that the interpretation and application of the agreement become necessary, the ruling becomes a precedent affecting and even apparently modifying the agreement; that the handling of such claims by a representative other than the chosen craft representative tends to and does break down the agreement, to the prejudice of the craft representative and the craft as an entirety. Hence, so petitioner argues, since under the Act the carrier cannot lawfully recognize any representative except the Engineers' Committee in the handling of disputes of the first class, where the engineers' craft is involved, it is equally forbidden to do so when the dispute is of the second class, and an individual serving as an engineer is involved.

(c) The Act Provides Separate Methods and Machinery for the Handling of the Two Classes of Disputes.

Petitioner's position is not sustained either by reason or authority, or on the face of the Act itself.

The Act provides wholly separate methods and machinery for the handling and settling of the two classes of disputes. Those of the *first* class, involving changes in craft agreements, must be initiated by a proposal from one party to the other (Railway Labor Act, Sec. 6), followed by conference (Sec. 2: Second). If the parties do not agree in conference, the services of the National Mediation Board may be invoked by either (Sec. 5: First), or volunteered by the Board, in an effort to

bring about agreement. If mediation fails, the parties must be requested by the Mediation Board to agree to arbitrate (Sec. 5). If they agree, arbitration proceeds under Sections 5 (Third), 7 and 8, culminating in an arbitration award (Sec. 9). If they do not agree to arbitrate, the change in the agreement, if proposed by the employer, may be made effective not less than 30 days after the Mediation Board has withdrawn from the dispute (Secs. 5, First(b); 6). If the changes are proposed by the employees' representative, the latter are then free to assert their "economic strength" (i.e., to strike or threaten to strike) to compel the employer to agree; they may also use the same weapon to resist proposed changes by the employer. Even at this stage, there is a further and final means of promoting peaceful settlement. If the threat of strike appears likely to interrupt essential transportation service, the President may, under Section 10, appoint an Emergency Board to investigate the dispute, and report its findings of fact and recommendations thereon to him within 30 days. During that period, and for a further like period of 30 days following the report, neither party may change any of the conditions out of which the dispute arose: i.e., the employer may not make effective any proposed changes in the agreement, while the employees may not carry out their threat of strike.

Disputes of the *second* class are, as above stated, invariably predicated upon a claim by an employee who feels that he has not been paid as provided by the craft agreement, or that he has otherwise been unjustly treated, and are customarily termed "grievances." These disputes must first be handled "in the usual manner" (Sec. 2, Sixth;

3(i)). The "usual manner of handling" is fully described in the testimony (R. 140-141, 150-151, 205-208, 240) and the findings (Finding No. 7, R. 48-50): that is, the employee normally presents his claim to his immediate superior; when it is rejected, he then selects the chairman of his local lodge ("his own organization"), who handles the matter further with the local officials of the carrier; and when the latter again disallow the claim if is appealed to the general chairman of the claimant's brotherhood, who will then handle it again with the carrier's general manager, or his representative, at the carrier's general headquarters. The duty of employee and management representatives to confer upon these disputes is expressly declared in Section 2, Sixth; and it will be noted that in that paragraph, as elsewhere in the Act, they are placed in a wholly different class from the disputes over proposals to change rules, wages or working conditions (i.e., of the first class), as to which the duty of conference is specifically declared in Section 6 of the Act.

If a dispute of the second class is not settled through such handling "in the usual manner," then under Section 3(i) of the Act it may be referred to the National Railroad Adjustment Board, which has jurisdiction to make an award (Sec. 3(n)). This award becomes binding upon the parties, except in so far as it calls for the payment of money (Sec. 3(n)), being in that event enforceable by suit (Sec. 3(p)). It should be noted that the National Railroad *Adjustment* Board is wholly distinct from the National *Mediation* Board. The Adjustment Board has actual power to hear cases and make awards in disputes of the second class, but has nothing to do with disputes

of the first class. The Mediation Board has no power to make awards in *any* class of disputes between employers and employees; its intervention as a mediatory body is restricted to those disputes which either involve *changes* in working agreements (i.e., of the *first* class), or are otherwise not referable to the Adjustment Board.

These different methods of procedure are thus a recognition, in the very framework of the Act, of the essential differences between disputes of the first class, over rules establishing or modifying working conditions, which may and usually does involve and interest the craft as a whole, and those of the second class, which grow out of grievances or out of the interpretation or application of agreement rules, and therefore involve and interest only the individual employees who present the claims. This distinction was well stated in an address delivered on November 12, 1936, before the Academy of Political Science, by Dean Lloyd K. Garrison of the Law School of the University of Wisconsin, dealing with the subject "Labor Relations in the Railroad Industry." Dean Garrison has served many times as a referee for the First and Third Divisions of the National Railroad Adjustment Board, pursuant to appointment by the Mediation Board in accordance with the provisions of Section 3(l) of the Act. In this capacity his experience compares with that of Dean William H. Spencer of the University of Chicago Business School, whose publication, "The National Railroad Adjustment Board," is referred to as an authority and relied upon in petitioner's brief (at p. 42). In Dean Garrison's address, he said in part:

"The Mediation Board has been active in . . . disputes growing out of a desired change in wages or working conditions. . . . The Board is performing a useful function with great ability and success. When it fails in mediation, as of course it often does, the law provides a method of voluntary arbitration. If the parties cannot be induced to arbitrate, the matter is dropped unless a serious interruption of commerce is threatened, in which event the President may appoint an emergency board to investigate and report. During its investigation and for 30 days after its report the status quo must be maintained. After that nature may take its course. These provisions for mediation, arbitration and investigation, particularly the first two, are based upon a long experience and a long legislative history. They are sound and have proved their worth.

"They relate, however, only to conflicts which are not justiciable in nature—demands for an increase or reduction of wages, changes in rule and so on. These conflicts generally end in compromise. But there are other conflicts which are justiciable in nature—disputes about the meaning of particular clauses in written agreements. These disputes call for judicial interpretation and decisions, not conciliation and compromise. Now experience has shown that you cannot successfully combine judicial and mediatory functions in one body. We tried it with the United States Railroad Labor Board, set up after the war, and the result was a memorable failure. Congress, therefore, in creating the new Mediation Board, gave it no judicial functions. These were assigned to another new agency, the National Railroad Adjustment Board.

"The Adjustment Board interprets and applies written contracts between carriers and unions, hand-

ing down decisions which are reviewable and enforceable in the federal courts."

(d) The Act, Though Requiring Recognition of the Chosen Craft Representative on Matters Pertaining to the Craft as a Whole, Permits an Employer to Meet the Employees Individually on Matters of Individual Concern.

Petitioner bases its argument particularly upon paragraphs Third and Fourth of Section 2 of the Act, and especially upon the second sentence of paragraph Fourth, reading as follows:

> "The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act."

To sustain its position in this language, which relates only to the representative of the *craft,* prohibits the representation of any *individual* in that craft by any other representative, petitioner cites (its brief, pp. 7, 22, 27) the decision of the Supreme Court in *Virginian Railway Company v. System Federation* (1937), 300 U.S. 515, and relies in particular upon a portion of one sentence of that opinion (300 U.S., at p. 548), declaring that the Act

> "imposes the affirmative duty to treat only with the true representative, and hence the negative duty to treat with no other."

Petitioner dismisses, however, as without significance, certain of the most important language of the opinion, which we quote below.

The case involved the review by this Court of a decree rendered by a district court, in which the railway com-

pany, as the employer, had been forbidden to undertake any negotiations or enter into any contract concerning rules, rates of pay, or working conditions for its shop-department employees, except with the labor organization selected by the majority of those employees as their craft representative. The decree had been rendered pursuant to Section 2 of the Act, so that the decision involved the interpretation of the language of that section.

This Court declared that the Act imposed upon the employer the affirmative duty to negotiate with respect to rules, rates of pay, and working conditions affecting the craft, with the representative chosen by the majority of the craft, and hence the negative duty to negotiate with no other representative; but the Court also said (300 U.S., at pp. 548-549):

> "We think, as the Government concedes in its brief, that the injunction against petitioner's entering into any contract concerning rules, rates of pay and working conditions, except with respondent, is designed only to prevent collective bargaining with anyone purporting to represent employes, other than respondent, who has been ascertained to be their true representative. When read in its context it must be taken to prohibit the negotiation of labor contracts, generally applicable to employees in the mechanical department, with any representative other than respondent, *but not as precluding such individual contracts as petitioner may elect to make directly* with individual employees.[1] The decree, thus construed, conforms, in both its affirmative and negative aspects, to the requirements of Section 2."

1. All emphasis in this and other quotations has been supplied by the authors hereof, except as noted.

Furthermore, in considering the validity of Section 2 of the Act, under the Fifth Amendment, the Court said (at p. 557):

> "The provisions of the Railway Labor Act applied in this case, as construed by the Court below, and as we construe them, do not require petitioner (the employer) to enter into any agreement with its employes, *and they do not prohibit its entering into such contract of employment as it chooses, with its individual employes.* They prohibit only . . . use of the company union . . ."

Again the Court said (at p. 559):

> "*The provisions of the Railway Labor Act invoked here* neither compel the employer to enter into any agreement, *nor preclude it from entering into any contract with individual employes.*"

In other words, as this Court plainly recognized, there is no inconsistency between the exclusive right of the petitioner to represent the entire craft of engineers employed by the carrier, for purposes of collective bargaining respecting matters affecting the entire craft as such, and the right of individual engineers to enter into individual agreements with the carrier, and for that purpose to meet with the carrier either directly, as individuals, or through a representative of their own choosing, so long as there is no attempt to make a collective bargaining agreement with such individuals which will affect the working conditions of the craft as a whole.

The entire argument of the Engineers' Committee is predicated upon the erroneous premise, stated in the very

first sentence of its discussion (its brief, p. 22), and thereafter restated several times in subsequent passages, that the inclusion of the word "engineer" in the challenged paragraph of the Firemen's Schedule is equivalent to an agreement between the carrier and "a minority Brotherhood" with respect to the "craft or class of engineers."

The initial error lies in the assertion that the Firemen's Committee, in this instance, is "a minority representative." It may be true that the Firemen's Brotherhood does not include in its membership more than a minority of the engineers employed by the carrier; but that fact is immaterial. The Firemen's Committee has not entered into the agreement as a representative of that minority, considered as a group. So far as concerns its engineer members, the Firemen's Committee appears only as the representative of each of those several individuals; and the agreement provision challenged by the Engineer's Committee is, in legal effect, simply an agreement between the carrier and each such individual engineer.

The second error in this initial premise lies in petitioner's assertion that the agreement with the Firemen's Committee is with respect to the "craft or class of engineers." The agreement, so far as concerns the individual engineers with whom it is made, relates only to their several individual controveries with the management. The craft of engineers as a whole is not involved, for the disputed clause not only does not attempt to provide for craft representation (of the engineers), but on the contrary affirmatively declares that the handling of individual claims ("grievances") shall be under the *recognized inter-*

pretation of the Committee *making the schedule* (in the case at bar, the Engineers' Committee).

The petitioner argues at length that the handling and settlement of disputes arising under the Engineers' Schedule is part and parcel of the process of collective bargaining, in that such settlements become interpretations of the contract, and thus attain standing as precedents for the disposition of subsequent grievances. This is true only when the settlements are between the parties to the contract: i.e., between the Engineers' Committee and the carrier. But it is emphatically not true when an engineer's grievance is made the subject of a settlement between the Firemen's Committee, as representative of the individual engineer claimant, and the carrier; nor would it be true if the settlement were made with any other representative not a party to the Schedule. In such case the settlement could not constitute an interpretation of the agreement, or become a precedent binding upon the craft representative, or otherwise have any effect except to dispose of the dispute as between the two parties immediately concerned: the individual claimant and the employer. Even a compromise on the basis of partial satisfaction of the entire claim (Cf. Ex. 11, R. 311, which petitioner appears to consider a "horrible example") is no more than a private agreement, which obviously does not affect the craft or its contract, nor otherwise infringe any prerogative of the craft representative. Such settlements are, in fact, outstanding examples of those "contracts with individual employes" which this Court, in the *Virginian case*, stated were not precluded by the pro-

visions of the Railway Labor Act (300 U.S., at pp. 557, 559).

It is clear that neither the craft agreement itself, nor the rights of the Engineers' Committee, as the craft representative, are infringed when the Firemen's Committee represents an engineer in handling his individual grievance to a conclusion before the National Railroad Adjustment Board. The Act itself (Sec. 3 (j)) provides for individual representation; furthermore, the Engineers' Brotherhood has its own representative on the First Division, which has jurisdiction over all engineer cases, so that the Engineers' Committee has full opportunity to be represented in every such case, even though it does not actually present the case to the Board.

The same essential question here discussed was also presented in Case No. 1, before the Emergency Board appointed by the President on April 14, 1937, under Section 10 of the Act, for the purpose of considering various disputes which had led to a threatened strike of the members of two important crafts of the carrier's transportation employees. The report of that Emergency Board, as rendered to the President, was printed as a public document. It is reproduced in full in the record as Exhibit A (R. 726-779). Although petitioner at the trial affected to regard this report as incompetent ("res inter alios acta"), and therefore inadmissible as evidence against any party to the case (compare its counsel's remarks, R. 188), it cannot and apparently does not deny that it is both material and relevant. Certainly, as an expression of views rendered by a body legally created and convened pur-

suant to the applicable statute, the report is entitled to at least as much respect and authoritative weight as, for example, statements in opinions of the Second and Third Divisions of the National Railroad Adjustment Board, which petitioner relies upon (Brief, p. 41); or expressions found in reports of the Attorney General's Committee on Administrative Procedure (Brief, p. 32); or in memoranda submitted to that Committee by the Railway Labor Executives Association, in connection with matters quite foreign to the present controversy (Brief, pp. 41-43); and to far greater weight than statements by authors such as Rosenfarb (cited on pp. 36, 48 of petitioner's Brief), or Lorwin & Wubnig (cited on p. 48). Indeed, the discussions by the authors last referred to related to the National Labor Relations Act and various developments connected with it, and were not addressed to the Railway Labor Act.

It is at least very questionable whether petitioner's objection to the Emergency Board report is well taken. The proceedings before that Board, particularly in Case No. 1, involved exactly the same parties and essentially the same major representation issue as the present suit. Petitioner appeared before that Board voluntarily and demanded to be heard, although it was not originally a party to the controversy, and had not threatened to cause its members to join in the strike against the carrier. Its appearance was allowed because of its insistence that it was vitally interested. It was represented before the Emergency Board by the same officers (Messrs. Laughlin and Peterson) who testified in the present case, and by one of the same counsel (Mr. Weisell) (R. 727). It made a voluminous

showing before the Board, and otherwise took an active part in the proceedings. Perhaps it is true that the Board's findings and recommendations are not binding upon petitioner; but it will not be denied that they were respected and complied with by petitioner, as well as by the other parties before the Board; and it must be admitted that they were rendered only after petitioner had requested and received full opportunity to be heard.

The particular question involved in Case No. 1 before the Emergency Board arose out of objections made by the Firemen's Committee to an agreement entered into between the carrier, as the employer, and petitioner as the representative of the engineers' craft, which provided in substance that whenever claims of individuals were presented under the rules of the Engineers' Agreement, by any organization or representative other than the Engineers' Committee, the claim or dispute must first be referred to the latter for its interpretation of the rule involved. It was claimed by the Firemen's Committee that this agreement seriously abridged its right to represent its engineer members in the handling of their individual grievances, and was therefore unlawful. When the carrier refused to abrogate the challenged agreement with the Engineers' Committee, the Firemen's Committee took the issue to its membership, and obtained authority to call a strike of the firemen in the carrier's employ. The appointment of the Emergency Board, and the presentation of the matters before that Board as a fact-finding body, followed in accordance with Section 10 of the Act. The definite issue was thus presented before that Board whether, on the one hand, the representation rule (Art.

51, Sec. 1) of the Firemen's Agreement, now challenged here by petitioner, was lawful and binding, or whether, on the other, an abridgment of the rights preserved by that rule could be sustained.

The Emergency Board concluded that the representation rule was not unlawful, but that the attempted abridgment violated the Act, and should be cancelled. The following portion of the Emergency Board's Report is particularly in point (R. 736-737):

> "The agreement of February 27, 1936, between the Carrier and the Brotherhood of Locomotive Engineers, as interpreted and followed by the contracting parties, modifies and impairs the right of representation theretofore secured to the Brotherhood of Locomotive Firemen and Enginemen through its contract with the carrier.
>
> "It also offends the objects and principles of the Railway Labor Act and infringes upon the rights intended to be secured by that act. This legislation was enacted for the purpose of protecting national transportation against the consequences of labor disputes between carriers and their employees. It was devised by representatives of management, the employees and the public. It secured the benefits of unhampered collective bargaining to the several crafts or classes engaged in the work of railway transportation. When a craft or class, through representatives chosen by a majority, negotiates a contract with a carrier, all members of the craft or class share in the rights secured by the contract, regardless of their affiliations with any organization of employees. It is clearly provided that these rights may be protected by negotiation or by the several methods of adjust-

ment established by the Act. *It is true that the representatives of the majority represent the whole craft or class in the making of an agreement for the benefit of all, but it is equally true that nothing in the Act denies the right to any employee, or group of employees, to enforce, through representatives of his or their own choosing, his or their rights under any such agreement.* The whole spirit and intention of the Act is contrary to the use of any coercion or influence against the exercise of any individual's liberty in his choice of representatives in protecting his individual rights secured by law or contract."

(c) The Petitioner's Contentions, if Sustained, Would Create "Closed-Shop" Conditions, Which the Act Condemns.

Finding 8 of the District Court (R. 50) states that the petitioner and the Firemen's Committee have been and now are in competition for members, and that if the petitioner's contentions were sustained, so that engineer members of the Firemen's Brotherhood were required to accept the representation of the petitioner in the presentation and handling of their individual claims and grievances pursuant to the Act, that fact would discourage membership in the Firemen's Brotherhood, and encourage membership in the Engineers' Brotherhood. While the petitioner originally challenged this finding in its brief and argument before the Circuit Court of Appeals (R. 781-787), asserting that the evidence was insufficient to support the finding, apparently it does not now consider it of sufficient importance to require separate mention. In any event, the finding is squarely in conformity with the statements made by the Emergency Board, in the text

of its report (Exhibit A), and likewise fully warranted by the evidence generally showing the rivalry of the two organizations.

Indeed, we think that the finding merely states a very obvious conclusion which cannot be avoided. If an individual engineer member of the Firemen's Brotherhood is to be denied the right to select the committee of his own organization as his representative for the handling of his individual claims and grievances, in the manner heretofore consistently followed for many years, his membership in the Firemen's Brotherhood will become of very little value to him. If he is also compelled, as petitioner contends, to select the Engineer's Committee as his representative in order to obtain representation and handling of his grievance in accordance with the Act, he will be virtually forced to join the Engineers' Brotherhood. In that event, no engineer could afford to remain in the Firemen's Brotherhood, or stay out of the Engineers' Brotherhood; for the petitioner could, and in such circumstances conceivably would refuse to handle any grievance except those of its own contributing members. Engineers not members of the petitioner would have no individual representation, even before the National Railroad Adjustment Board, according to petitioner's contention (petitioner's brief, p. 31).

The intended and necessary result, therefore, of petitioner's contentions is to impose the equivalent of a "closed shop" upon engineers in the carrier's employ, and thus to create a condition expressly condemned by Section 2, Fifth, of the Act. As already stated, that paragraph forbids any contract or agreement whereby a

person seeking employment binds himself to join or not to join a labor organization; and any contracts of that character are declared not to be binding. Section 2, Fourth, likewise forbids an employer to influence or coerce employees in an effort to induce them to join or not to join any labor organization. It may be added, in passing, that the National Labor Relations Act, unlike the Railway Labor Act, sanctions and even encourages closed shop contracts: See Section 8, par. 3; 29 U.S. Code 158 (3).

The Emergency Board of 1937 pointed out (Ex. A, R. 737-738) that any limitation which would substantially handicap the power of the Firemen's Brotherhood to protect the rights of its engineer members promptly and adequately would make membership in the Engineers' Brotherhood more desirable, and thus present to the latter an opportunity to increase its membership at the expense of the firemen's organization. There can be no effective denial that this is the purpose and intent of the petitioner in this litigation. We repeat that any such result falls within the condemnation of the "closed shop", expressly declared in the provisions of Section 2 of the Act above cited.

(f) By Requiring the "Usual Manner of Handling" as a Prerequisite to the Reference of a Dispute to the Adjustment Board, the Act Has Sanctioned Individual Representation in Individual Disputes.

A further conclusive argument, which wholly disposes of petitioner's contentions, rests in the fact that the Act not only recognizes the two distinct classes of disputes,

and provides different avenues for their handling and settlement; it also specifically declares the manner in which the employees shall be represented. When the dispute is of the *first* class, involving the broad interest of the entire craft, the exclusive representative of the craft is, of course, the representative chosen by the majority (Sec. 2, Fourth). But it will be noted that this representative is, as expressly stated in the second sentence of paragraph Fourth, "of the *craft* or *class*"; not of each of the individual employees who belong to the craft. The *Virginian Railway* decision clearly establishes that the principle of exclusive craft representation for purposes of handling disputes involving the craft does not prevent individual agreements with individual employees; and by the same token it does not prevent individual disagreements, for these of necessity must precede agreements.

The Act goes further, however, in dealing with these individual disputes (of the second class), which "grow out of grievances or out of the interpretation or application of agreements" to individual claims. As to these, the Act says (Sec. 3 (i)) that they "shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes"; after which they may be referred by petition to the appropriate division of the Adjustment Board.

The "usual manner of handling" prior to, and at, and ever since the date of the Act is fully developed in the record, there being no conflict between the witnesses who discussed this topic. Finding 7 (R. 49-50) accurately summarizes this testimony, and though this finding is chal-

lenged by petitioner (Brief, pp. 40-48), no attempt is made to show wherein the finding does not correctly reflect the record, or that the supporting evidence is incompetent or inadequate. The finding may therefore be accepted as true and correct.

For the purposes of this case, the outstanding feature of the "usual manner of handling", thus required by statute, is the freedom of the individual claimant to choose his own organization to represent him in handling his claim with his employer. No witness asserted that this was not part and parcel of the "usual manner". Petitioner's leading witness and general chairman, Mr. P. O. Peterson, stated on his *direct* examination (R. 140-141) that an individual engineer might handle his claim with the superintendent as an individual; "or he may turn his claim over to his organization, the local chairman". We emphasize that the witness did not say that the claim must be turned over to the Engineers' Committee, as the majority representative; it might, as the witness said, be turned over by the individual to his own organization.[2]

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2. If petitioner's argument were sound, it would be unable to present to the carrier or to handle with the Adjustment Board the individual grievance of one of its own members, arising out of service as a fireman: i.e., while cut off the engineers' working list and demoted to the firemen's craft. Nevertheless, the petitioner has handled a number of such cases, not only with the carrier, but to the First Division of the Adjustment Board, some of which were presented prior and others subsequent to the date (Oct. 12, 1939) of filing the complaint in the present case. We cite in particular: Docket No. 1850, Award No. 905, in which the petitioner's statement of the claim to the Adjustment Board read in part as follows: "Claim of Fireman F. A. Thompson . . . for 100 miles held for service . . . under provisions of . . . Article 23, Section 6, Firemen's Agreement"; Docket No. 1851 (covered by Award No. 1079), dated April 30, 1936, in which the petitioner's statement of the claim was in part as follows:

This testimony was strongly confirmed by Mr. C. M. Buckley, who, though appearing as the carrier's witness, had had many years of prior experience as a local chairman, first of the Firemen's Brotherhood, and later of the Engineers' Brotherhood, on the carrier's Los Angeles Division (R. 150). It was likewise confirmed by the testimony of Mr. D. B. Robertson, President of the Firemen's Brotherhood (R. 205-206), whose qualifications to testify as to the "usual manner" which has prevailed for many years were not and could not be questioned.

The statute not only recognizes handling "in the usual manner", by requiring it as a prerequisite to the reference of a dispute of the second class to the Adjustment Board, and thus preserves the right of individual selection of the representative in these preliminary stages; it continues to preserve that right when the claim has reached the Board. When such a claim is presented to the Adjustment Board, it is not, as petitioner appears to argue, a craft dispute. The statute specifies (Sec. 3 (i)) that such disputes are "between an employee or

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"Claim of demoted engineer (fireman) for difference between what he earned as engineer, and what he would have earned on firing assignment same date"; and the following dockets, submitted by the petitioner at various dates, commencing on September 17, 1940 and continuing through each of the intervening years to and including June 8, 1943: Nos. 11127, 11172, 11277, 12020, 12686, 12701, 12531, 12532, 13213, 13219, 13218, 13225, 13223, 13414, 16210, 16410, 17049, 16765, 16991, 17073.

In each of these dockets, with two exceptions, the claim is on behalf of one or more individuals who served as firemen, and is expressly predicated upon one or more provisions of the Firemen's Agreement. The two exceptions both relate to engineers serving as firemen, but are predicated, in one instance, upon a rule promulgated by the employer, and in the other, upon a prior award of the First Division. All of this second group of cases are now pending and awaiting final disposition by the First Division.

group of employees and a carrier or carriers"? i.e., between an individual employee and his employer, as well as between a number of employees, and one or more employers. The section conspicuously omits any reference to the craft or class of employees as a possible party to such a dispute. The right of the individual or group of individuals interested in such a dispute to select his or their own representative in handling the case before the Adjustment Board is preserved by Section 3 (i), which states:

> "Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect . . ."

Petitioner quotes at length from the Memorandum submitted by the Railway Labor Executives' Association to the Attorney General's Committee on Administrative Procedure (pp. 41-43 of its brief), and has attached the entire Memorandum as Appendix B to its brief, apparently for the purpose of supporting the contention that the only proper "party" to a dispute before the Adjustment Board, so far as the employees' interest is concerned, is the craft representative chosen by the majority. Petitioner would thus appear to argue that an individual employee may not take his own case to the Adjustment Board. This argument is fully disposed of by the decision of the Circuit Court of Appeals for the Fifth Circuit, in

> *Illinois Central R. Co. v. Moore* (1940), 112 F.(2d) 959,

in which that court said (pp. 963, 965-966):

". . . Section 3, 45 U.S.C.A. 153, provides jurisdiction in the Railroad Adjustment Board for all manner of disputes, the First Division being expressly given jurisdiction over those involving yard-service employees. Subsection (i) makes it plain that not only disputes raised by the Union but also those of a single employee are included, saying: 'The disputes between *an employee* or group of employees and a carrier . . . growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on June 21, 1934, *shall be handled* in the usual manner up to and including the *chief operating officer* of the carrier', and then *may be* referred to the Adjustment Board." (pp. 963-964).

". . . The Adjustment Board may settle the disputes of the individual employee as well as those of a group, 45 U.S.C.A. 153 (i):" (p. 965).

". . . In case of an arbitrary discharge the union might take the matter to the management, the Adjustment Board, or even to the test of a strike. The individual also on his individual contract of employment may seek reinstatement with pay through the railroad's officers, or through the Adjustment Board; . . . " (p. 966). (Emphasis as in the original.)

While the decision of the Circuit Court of Appeals was reversed on other grounds (*Moore v. Illinois Central R. Co.* (1941), 312 U.S. 630, it was approved by this Court upon the point discussed in the quoted excerpts (312 U.S., at pp. 635, 636).

(g) Petitioner's Counsel and its Witnesses Are Inconsistent in Their Statements of Petitioner's Position.

Petitioner's argument, and indeed its basic contention (set forth at p. 31 of its brief) that an individual engineer may not pursue his remedy before the Adjustment Board by a representative of his own choosing, such as the Firemen's Brotherhood, stands in strange contrast with the views declared by Mr. G. W. Laughlin, First Assistant Grand Chief Engineer of the Engineers' Brotherhood, who was called as petitioner's closing witness. Mr. Laughlin stated, in substance, that when an individual engineer has a dispute arising under the Engineers' Schedule, which cannot be settled with the management, that individual "can take a case to the (Adjustment) Board under the law, or he can select anyone he desires to take it to the Board" (R. 288); before the Adjustment Board he could, in Mr. Laughlin's opinion, "be represented by anyone of his own choosing" (R. 295). This same witness said, however, that in the preliminary stages of handling with the management, which precede the reference to the Adjustment Board, the engineer must be represented only by the craft representative, i.e., by the petitioner (R. 285, 286, 294).

There is thus presented the rather strange spectacle that petitioner, through its counsel and its two witnesses, advances three separate contentions, each inconsistent with the other two. In its brief, speaking through its counsel, petitioner contends that an engineer cannot be represented, at *any* stage of a dispute of the second class, by any representative except the Engineers' Brotherhood, if the dispute is handled and brought to conclusion under

the procedures provided by the Act. Petitioner's General Chairman P. O. Peterson admitted, however, that the "usual manner of handling" with the management, contemplated by the Act, involved as the first step that the claim of the individual would be turned over by him to the local chairman of his organization for discussion with the employer's subordinate officials (R. 140). In other words, at the very first stage of handling under the Act, an engineer member of the Firemen's Brotherhood might and usually would select his own organization to represent him. Mr. Laughlin challenged this view, and declared that the dispute may be handled with the management only through the petitioner as the craft representative, though conceding that in the final stage (before the Adjustment Board) the individual may choose any representative he desires.

(h) The National Mediation Board Has Disapproved in Principle the Contentions Here Advanced by Petitioner.

Several times, in the course of its argument, petitioner refers to decisions of the National Labor Relations Board, and quotes at length from such decisions, apparently regarding them as having authoritative value, even though rendered pursuant to another and wholly distinct statute (the National Labor Relations Act). But petitioner in its argument wholly ignores a letter (Ex. B, R. 209-228) written on January 4, 1936, by Mr. J. W. Carmalt in his official capacity as a member of the National Mediation Board, addressed to the chief executive officers of the Engineers' and Firemen's Brotherhoods, in which the official views of the Mediation Board were set forth at

length. Certainly such a pronouncement, if duly authenticated (and the authenticity of the letter was conceded by petitioner: R. 209), rendered by the Chairman of a Board especially created and functioning under the Railway Labor Act, possesses much greater force than any expressions of the National Labor Relations Board. We feel warranted, therefore, in calling certain portions of the letter more directly to this Court's attention. Mr. Carmalt, speaking for the Mediation Board, said therein (R. 217):

"The first case of importance arising under the amended Railway Labor Act is that brought by the B. of L. F. & E. requesting the establishment of a rule on the International-Great Northern, which would give to the members of the B. of L. F. & E., when acting as engineers, the right to have the General Chairman of that organization represent them in grievance cases. It has not been possible to bring about a settlement of this case for the reason that owing to local conditions the Company has declined to serve notice to open that provision of the engineers' contract which gives to the B. of L. E. the exclusive right of representation of engineers. *This Board has ruled that a contract giving exclusive right of representation for grievance cases to any organization is unlawful under the amended law.* It said in a letter to the management:

'The National Mediation Board is compelled to view as a matter of law that the supplemental contract effective October 17, 1928, with the B. of L. E. is absolutely illegal, since the Company interprets it to give to the engineers' committee a right to represent any employee who desires another rep-

resentation. No contract between a railroad employer and an organization of employees can give to that organization any right to represent an individual employee unless the employee himself assents. The right of an individual to designate the representative of his choice is guaranteed by Section 2, (Second) and the carrier is prohibited by Section 2 (Third) from interfering, influencing, coercing or seeking in any manner to prevent the designation by its employees of their representatives. There is no possible escape from this conclusion as it seems to us, since Section 2 (Eighth) provides that Paragraph Third of the Section is made a part of the contract of employment between the carrier and each employee.'

"Controversy between the organizations on this Railroad is the outgrowth of local conditions for which the General Chairman of the B. of L. F. & E. was originally largely responsible but management took advantage of it to make this representation contract —of doubtful validity when made and now clearly in violation of the amended Railway Labor Act. Wherever the original fault may have laid, operation under the exclusive representation rule not only practically denies any representation under either contract for the members of the B. of L. F. & E. but produces a relationship between management and all employees in engine service that serves no good purpose."

It seems obvious that if the Act does not *permit* an exclusive representation rule of the type referred to in the above quotation, equally it cannot be construed as *conferring* the exclusive representation right in individual cases for which petitioner contends.

Repeated references are also made, in the course of petitioner's argument, to decisions under the National Labor Relations Act rendered by various courts; and in this connection articles and discussions treating with that statute and matters arising thereunder are also cited. These references are at best of doubtful value, and in the present case serve merely to confuse, rather than to clarity, the issues. While the Railway Labor Act and the National Labor Relations Act no doubt are somewhat similar from the standpoint of their broad objectives, they have one important difference, already referred to, which deprives petitioner's citations of authoritative force in the instant case: namely, that the National Labor Relations Act (Section 8, par. 3) not only permits, but even encourages, collective-bargaining agreements between employers and labor organizations representing their employees requiring membership in the duly chosen representative labor organization as a condition of hiring or continuance in employment (i.e., "closed-shop" contracts); whereas the Railway Labor Act expressly condemns and prohibits such agreements. Since it is petitioner's obvious purpose in this case to obtain the equivalent of closed-shop conditions for engineers employed by the carrier, and that result would plainly follow if petitioner were successful, it is natural for petitioner here to refer to decisions under a statute which tolerates and even favors the closed-shop principle. We are certain that this Court will not permit itself to be led astray by petitioner's reliance upon discussions and interpretations of an entirely different basic principle which, though recognized by the National Labor Relations Act, is expressly rejected

in the statute here involved. Indeed, this Court has remarked the distinction between these two statutes, declaring that "decisions dealing with the legal obligations arising under the Railway Labor Act cannot be regarded as apposite" in a proceeding for enforcement of an order made pursuant to the National Labor Relations Act.

Amalgamated Utility Workers v. Consolidated Edison Co. (1940), 309 U.S. 261 (269).

Near the conclusion of its argument petitioner refers (p. 48) to an alleged "hectic conflict" over the governing principles of craft representation, occurring at or about the time when the present National Labor Relations Act (not the Railway Labor Act) was in process of evolution. The purpose of these references is obscure, since the Railway Labor Act in its present form was then on the statute books, and could not have been involved in the conflict in any way.

In any event, it is clear that the carrier has no immediate concern with interpretations accorded the National Labor Relations Act, because it is not subject to that statute. In all of its employment relations it is subject exclusively to the Railway Labor Act. Petitioner may be quite correct in asserting that the National Labor Relations Act, as passed by Congress and applied by the courts, forbids an employer to recognize individual employees, or any representative other than the organization freely chosen by the majority, for any purpose whatsoever having to do with disputes or other incidents of the employment relation; we have pointed out that that Act expressly sanctions closed-shop agreements in certain circum-

stances. Petitioner is wholly in error, however, when it attempts to accord the same interpretation to the Railway Labor Act. In the *Virginian Railway case*, supra, this Court specifically declared, in three separate passages in its opinion (300 U.S., at pp. 549, 557 and 559) that the Railway Labor Act does not preclude individual agreements between the employer and its individual employees; and the Court also said (at p. 548) that all that was prohibited in the case before it was an attempt by the employer to undertake collective bargaining, over the craft agreement to be generally applicable to all members of the craft, with any representative other than the organization duly chosen by the majority for that purpose.

We conclude our argument in No. 27 with a brief comment upon the very able discussion of the representation issue which appears in the brief for the Government as *amicus curiae* (at pp. 54-79). The Court will have observed that we have approached the subject in somewhat different fashion than the Solicitor General. We find, however, that we are in agreement with nearly everything that is said upon this topic in his brief. Our only disagreement relates to the suggestion, on the concluding page (p. 79), that the Railway Labor Act *permits* an employer to agree with the labor organization representing a craft or class of its employees that the latter shall have the exclusive right to represent all members of the craft in the handling of grievances. We believe that such an agreement is not only not sanctioned by the Act, but positively prohibited. It would be equivalent to an agreement compelling each member of that craft to join and continue in good standing as a member of the organi-

zation, thus directly contravening the provisions of Section 2, Fourth, which forbid that type of contract. For obviously, if the organization were by contract given the exclusive right of representing individual employees, it could impose upon each employee the requirement of membership as a prerequisite to representation; in fact, as the record herein indicates (R. 809-810), certain organizations now impose precisely that requirement.

We respectfully ask the Court to reject petitioner's contentions, as not being in accord with the plain provisions of the Railway Labor Act or the considered construction and application thereof, announced by the courts and followed by the tribunals created and functioning under the Act; and to conclude that the courts below did not err in declaring that the challenged representation rule (Art. 51, Par. 1) of the Firemen's Schedule is neither unlawful, nor in any respect an infringement upon any rights of the Engineers' Brotherhood or the Engineers' Committee.

II.

THE ISSUES RELATIVE TO THE MILEAGE-LIMITATION AND DISPLACEMENT PROVISIONS OF THE FIREMEN'S SCHEDULE (No. 41).

(a) Summary of the Schedule Provisions Involved.

We turn now to a discussion of the issues presented by Part B of the opinion of the Circuit Court (R. 815-826; 132 F.(2d), at pp. 202-206) and the cross-petition of the Firemen's Committee in No. 41, directed to that portion of the opinion.

The provisions of the Firemen's Schedule to which this portion of our discussion is addressed are set forth in full in the original complaint in the District Court (Par. 9; R. 7-12), and include: (a) Article 43, Sections 1, 2, 3, 4, and 6 (R. 604-606, 608), which state the conditions under which engineers, when "demoted" from the engineers' working lists because of lack of business or for other reasons, may *at once* exercise their seniority as firemen in order to enter and remain in the firemen's ranks, and by so doing displace other firemen their juniors from the jobs held by the latter; (b) the Addendum to Article 43 (R. 629-632), which provides a method of regulating the maximum "mileage" (earnings) of individual enginemen who, during the same month, serve for part of the time as engineers and the remainder as firemen; and (c) the questions and answers appended to Article 37, Section 15 (R. 587), which require the carrier to call "demoted" engineers holding regular firing assignments for service as emergency engineers in accordance with their previously-acquired seniority as engineers, and so prevent such men from being "run around", and thereby deprived of their guaranteed earnings as firemen.

(b) The Findings and Conclusions of the Courts Below Respecting Such Schedule Provisions.

The trial court held that all of these provisions were valid, and made appropriate findings and conclusions (Findings 10, 11(a), 13, 14; Conclusions 3, 4, 5(b); R. 51-53, 56-57). Specifically, as to Article 43 and the Addendum thereto, the trial court found (Finding 11(a); R. 52):

"11. (a) The provisions of Article 43, Sections 1, 2, 3, 4, and 6, and the Addendum to Article 43, Application of Mileage Regulations to Part-Time Men, of the Firemen's Agreement, were and are intended to set forth conditions upon which an engineer has the privilege of displacing a fireman and of continuing such displacement. None of said provisions was or is intended to or does regulate the craft of engineers apart from the privilege of a member of that craft to displace a fireman, or prevent the craft of engineers from contracting with the defendant as to different maximum or minimum miles or hours."

As to the questions and answers under Article 37, Section 15, the trial court found (Finding 14; R. 53):

"14. The Questions and Answers under Article 37, section 15, of the Firemen's Agreement were and are intended and reasonably calculated to protect the craft of firemen in their rights under said section and have a reasonable relation to the firemen's seniority rules."

Both these findings, and the conclusions accompanying them, were challenged by the Engineers' Committee upon its appeal to the Circuit Court (R. 784-787). The Circuit Court affirmed the trial court's judgment and decree, in so far as it relates to Article 43 and the Addendum, and in fact ordered that the decree be specifically amended by inserting Finding 11(a) as a part of Paragraph b thereof (R. 818). The Circuit Court concluded, however, that the questions and answers under Article 37, Section 15, were invalid in so far as they related to the entry of a fireman into the craft of engineers, and ordered the

decree modified accordingly (R. 826). The cross-petition of the Firemen's Committee particularly challenges this latter conclusion (see pp. 14-20 of that petition; and Subdivision III, pp. 30-33 of the brief for the Firemen's Committee), and also calls into question certain expressions used by the Circuit Court in the opinion, which are apparently susceptible of being construed as a limitation upon the scope and effect of Article 43, to the extent that it prescribes the conditions under which engineers, upon demotion, may exercise, and continue to exercise, the right to displace and take the jobs of junior firemen. In particular, the Firemen's Committee asserts that the Circuit Court erred in its statements: (i) that the "Railway and the Firemen's Committee agreed" that these provisions of Article 43 are "solely conditions of engineers' entry into and their employment as firemen and do not control engineer employment" (R. 822); (ii) that the trial court's interpretation of these provisions is that which the Engineers' Committee has claimed to be correct (R. 823); and (iii) that "the Act contemplates that the cleavage of the powers of the firemen and engineers' crafts to agree with the employer is at the point of imposing conditions of entry into the one craft or the other" (R. 824).

(c) Nature and Basis of the Displacement Privilege Extended to the "Demoted" Engineers.

In order that the purpose and function of Article 43 may be fully understood, certain important basic facts must be constantly kept in mind:

First, all engineers in the carrier's employ also hold seniority as firemen. Most of the engineers have been pro-

moted from the ranks of firemen. A few have been "hired", i. e., employed directly as engineers, without having first served the carrier as firemen. However, even these hired engineers also have seniority "dates" as firemen, which by agreement are the same as their "dates" as engineers. (R. 172, 603).

Second, both the Firemen's Schedule (Art. 43; R. 604-612) and the Engineers' Schedule (Art. 32, Sec. 6; R. 435-440) provide, in substantially identical language, that when an engineer is "cut off" the engineers' working list (i. e., "set back firing", because of lack of sufficient traffic to require his continued service as an engineer) he may *immediately* become a fireman, with right to displace any fireman his junior, subject only to the existence of certain conditions as to average or actual earnings of the group of engineers from which he has been cut off, and to which, as traffic increases, he will necessarily return.

Third, the firemen's organization is conceded by the Engineers' Committee (R. 109-110) to have the exclusive right to negotiate and agree with the carrier respecting conditions which shall govern, when men who are cut off as engineers undertake to enter, *or to remain in*, the ranks of firemen, and by so doing cause other firemen to be displaced.

The privilege of becoming a senior fireman, immediately upon being cut off as an engineer, is very valuable to each of the individual engineers, and thus to the entire group. If it were not for this privilege, the engineers would at times of light traffic be compelled either to parcel out the available work among all of the engineers, with corresponding reductions in the earnings of each, or to force

some of the group, probably the juniors, entirely out of active employment. On the other hand, because the privilege exists, the junior men can be cut off the engineers' working list, and are immediately able to work as senior firemen, with the right to obtain the more desirable firing assignments, where they are certain to realize substantial earnings (R. 160). Meanwhile, the senior engineers can maintain their own individual earnings at a satisfactory level, despite the reduced total volume of engineer employment.

(d) The Right of the Firemen's Committee to Attach to the Exercise of the Displacement Privilege the Condition that "Demoted" Men Shall Be Promptly Restored to Service as Engineers.

The Circuit Court appears to have recognized that all of the foregoing is true, but to have concluded that while the engineers' exercise of the displacement privilege *immediately upon demotion* may be subjected to conditions imposed by the Firemen's Committee through agreement with the carrier, the Engineers' Committee has the sole right to contract respecting the *return* of such demoted men to the ranks of engineers.

It may be conceded that the Firemen's Committee has no standing, under the Act, to contract directly with the carrier respecting the conditions under which an individual may become and remain an engineer, *unless those conditions appertain to the exercise of some right or privilege created by and related to the firemen's craft.* The essential point is, however, that the Firemen's Committee may agree, and has the sole right to agree, with the carrier as to the conditions under which men may

become and remain firemen. For the mutual benefit of the carrier and the members of the firemen's craft and, as well, the individual members of the engineers' craft and particularly those who at a given time are on the borderline between the two crafts, the Firemen's Committee has agreed that men who are cut off the engineers' working lists because of slack employment (or for any other reason) may immediately go on the firemen's working lists as senior firemen, *provided* that certain definite conditions are continuously satisfied respecting employment or opportunity for employment in the engineers' craft. The engineers, through their committee, have accepted the displacement privilege thus provided by the firemen in their agreement, and have written the same provisions into the Engineers' Schedule (Article 32, Section 6; R. 435-440); but of course the right is expressly subject, even as it appears in the Engineers' Schedule, to all of the conditions imposed by the firemen.

One of those conditions, expressly set forth in Sections 3 and 4, is that when an opportunity exists for all of the engineers, including such demoted men as may be restored to engineer service, to make reasonable earnings, the proper number of qualified men shall be taken from the firemen's list, in the order of their seniority as engineers, and returned to service as engineers. No one asserts that this is not a reasonable condition; no one asserts that a demoted engineer ought not to be returned to service as an engineer, when it is shown that his addition to the list will not reduce the average earnings of the entire group of engineers below a reasonable level. The objection of the Engineers' Committee, expressed in its complaint, and

throughout its handling of the case generally, has simply been that this condition operates to control engineer employment.

The trial court's Finding 11(a), which the Circuit Court ordered to be incorporated in the decree, clearly states that there is no such control, except to the extent that the challenged provisions constitute conditions under which demoted engineers may exercise the displacement privilege, and continue to remain in service as firemen after having displaced junior firemen. If, however, the engineers as a craft should prefer to abandon the privilege, then, by agreement with the carrier, they may impose whatever conditions they deem necessary upon the entry and continuance of men in the craft of engineers: for example, a qualification based upon years of firing service. But if those conditions, or any of them, were a departure from the conditions appearing in the Firemen's Schedule, then the displacement privilege would be inoperative unless the conditions in the Firemen's Schedule were complied with. The engineers prefer, however, not to abandon the privilege, for as already shown it is very valuable to their craft as a whole, and to the individual members. The engineers, or more accurately, the Engineers' Committee as their spokesman, merely wish to substitute their own control of some of the conditions under which the privilege may be exercised. To use a homely phrase, they would like to "eat their cake and have it"—to accept the privilege created by the firemen, but not the conditions attached to its exercise.

The Circuit Court therefore erred in concluding that the challenged provisions do not operate to control engi-

neer employment, or regulate the reentry of demoted men into the ranks of engineers, and in stating that the carrier and the Firemen's Committee agreed with that conclusion. The provisions in question do operate and regulate in precisely that manner; simply because they are an inseparable condition attached to the exercise of the displacement privilege, and because the engineers, when they accept and enjoy that privilege, must also accept and be bound by the limitations placed thereon by those who created it.

The trial court's findings make it quite clear that the challenged provisions do not, however, constitute any control by the Firemen's Committee of the working conditions of the engineers' craft, exercised against the will of the engineers. The Firemen's Committee, through its agreement with the carrier, exercises control over the reentry of demoted men into the engineers' craft, and the mileage which engineers may run, only because the engineers enjoy and use the displacement privilege created and extended to them by the firemen, and are willing to pay the price demanded by the firemen: namely, the restoration of demoted men to engineer service, and their continuance in that service, when a reasonable earning opportunity exists. The engineers can disavow the bargain if they choose, and thereupon exercise complete control, subject of course to the concurrence of the carrier, over the entry of men into their craft; all of which is expressly declared and recognized in the second sentence of Finding 11(a) (R. 52).

The Circuit Court's statements should be corrected by this Court, because they lend support to a construction

under which the engineers, as a craft, would continue to receive the benefits of the displacement privilege, but avoid the correlative obligation. Neither logic nor equity, nor a precise consideration of the provisions of the challenged sections themselves, permit such a construction, which clearly was never intended by the parties who made the agreement, nor presently accepted by them.

(c) The Reasonable Protection of the Seniority and Guaranteed Earnings of "Demoted" Engineers Called for Emergency Service Afforded by the Questions and Answers Under Article 37, Section 15, Firemen's Schedule.

The Circuit Court's conclusion as to the validity of the questions and answers under Article 37, Section 15 of the Firemen's Schedule proceeds out of the same apparent misapprehension concerning the rights of the Firemen's Committee to protect the members of its craft, and is therefore equally erroneous. The record shows (R. 169-172) that these questions and answers provide a means whereby a *demoted* engineer (working on a regular firing assignment) who is called to service as an emergency engineer, may continue to have the benefits of the guaranteed earnings of the firing assignment from which he is taken for the emergency service. Just as the Firemen's Committee may competently agree with the carrier respecting the conditions under which demoted men may reenter and remain in firing service, so it may also agree that when a demoted man, actually working on a regular firing assignment, is called for engineer service his seniority rights as an engineer shall be properly respected. The obligation expressed in these questions and answers is simply another reasonable condition attached to the general

privilege extended to engineers of reverting to firing service and exercising their firemen's rights, imposed by the Firemen's Committee, with the carrier's concurrence, in order that individual rights acquired through service shall not be disregarded. No essential right of the Engineers' Committee, or any member of the engineers' craft, is infringed or limited in any way through their operation; for when an individual coming within their scope has been called to, and enters upon engineer service, he performs his work pursuant to the Engineers' Schedule, and these questions and answers thereupon simply protect his seniority.

The judgment and decree of the trial court relative to the questions and answers under Article 37, Section 15, of the Firemen's Schedule, should be reinstated, and the modification thereof ordered by the Circuit Court (R. 826) should be set aside. The addition of Finding 11(a), to paragraph b of the decree, which was ordered by the Circuit Court pursuant to agreement of the carrier and the Firemen's Committee and without objection by the Engineers' Committee, is in the interest of clarity and should be allowed to stand.

III.

REQUESTED DISCUSSION

(a) Was Resort to the Declaratory Judgment Procedure Proper Under the Circumstances?

We concur with the petitioner, the cross-petitioner, and the Solicitor General in the conclusion that the declaratory judgment procedure has been properly employed in this case.

It is clear, initially, that there was no lack of "justiciable controversy" between the parties. They have been and are in actual disagreement as to their rights, duties, and liabilities under a statute and a written agreement entered into pursuant to that statute. Under the decision in the *Virginian case* (300 U.S. 515, at 563) a labor organization may maintain an action to prevent the infringement of its rights as the craft representative derived under the Railway Labor Act; so that if the acts complained of in the suit in the District Court had constituted an actual and unlawful infringement, the plaintiff therein would have been entitled to an injunction. In the circumstances, and since an actual controversy exists, resort to the "milder" relief of declaratory judgment was fully warranted.

Nashville C. & St. L. Ry. Co. v. Wallace (1933), 288 U.S. 249;

Aetna Life Ins. Co. v. Haworth (1937), 300 U.S. 227;

Borchard on Declaratory Judgments, 1st Ed. p. 629.

No reasons of comity can be assigned which would warrant the exercise of judicial discretion to refuse, in

the present case, to render a declaratory decree. There is no state case pending which involves the same parties, or the same or substantially similar, issues, as in *Brillhart v. Excess Ins. Co.* (1942), 316 U.S. 491; nor is this a case involving the validity of taxes collected by a state or a state agency, where it appears that an adequate legal remedy is available to the taxpayer, whereby the issue can be readily determined; compare *Great Lakes, etc. Co. v. Huffman* (1943), ... U.S. ....., 87 Led. Adv. Op. 1021). Further, this is not a case in which resort could, or should, first have been had to an administrative tribunal for the determination of the substantive issues, for no such tribunal is created by the Railway Labor Act. Neither the National Mediation Board, nor the National Railroad Adjustment Board, has any power to adjudicate a dispute of the present character. It is true that a dispute substantially identical in all its necessary aspects to the issue presented in No. 27 was reviewed by the Emergency Board created by the President on April 14, 1937, the full report of which was submitted to the trial court as Exhibit A (R. 726-779); but that tribunal had no power, under the Act, to make any final disposition of the issues or to take any action other than to investigate and report to the President. The present case is thus not at all similar to, or controlled by, the principles followed in

> *Washington Terminal R. Co. v. Boswell*, 124 F.(2d) 235 (affirmed by this Court, through an equal division of the Justices participating, June 14, 1943),

as the Solicitor-General properly points out in his brief (at pp. 25-26).

It is the declared policy of the Congress, expressly stated in the Railway Labor Act, to promote the peaceful and orderly settlement of disputes involving carriers and their employees. Resort to the "mild" relief of a declaratory decree of a competent court is certainly to be classed as procedure leading to peaceful and orderly settlement.

(b) Are Any of the Questions of the Construction of the Contracts Involved Governed by State or Federal Law?

The basic issue presented in each branch of the present case is as to the validity, under the Railway Labor Act, of certain particular contract provisions, rather than their construction; for the claim of the Engineers' Committee has been, and is, that the challenged clauses are invalid under the Railway Labor Act. This is purely a Federal question:

> *Sola Electric Co. v. Jefferson Electric Co.* (1943), 317 U.S. 173 (and cases cited).

The validity of the challenged contract provisions nevertheless depends, in some measure, upon the interpretation accorded to them. The Firemen's Schedule is an agreement which, though not governed as to its details by the Railway Labor Act, is nevertheless entered into pursuant to the collective-bargaining procedure therein contemplated (*Terminal Railway Association v. Brotherhood of Railroad Trainmen* (1943), 318 U.S. 1) and is, moreover, in case of dispute between the parties or between the employer and an employee, as to its interpretation and application, subject to being construed by the National Railroad Adjust-

ment Board. The latter is a Federal tribunal, especially created by the Act (Section 3). It may, therefore, properly be stated that there has been a Federal occupancy of the field, not merely of the validity of the agreement or the particular clauses thereof which are challenged, but also of its interpretation and application. Compare:

Philco Corporation v. Phillips, 133 F.(2d) 663 (671).

While it is true that an individual presenting a claim under the schedule could, at his election, sue the employer in a state court (*Moore v. Illinois Central*, 312 U.S. 630), yet even in such a case interpretations rendered by means of awards of the Adjustment Board would be entitled to weight as precedents.

Furthermore, it is proper to consider that the Firemen's Schedule, although entered into at San Francisco, was intended by the parties to have much more than merely local effect in California, and therefore was not to be interpreted according to the law of that state only. The employees who come within its scope perform their work in at least seven different states (Oregon, California, Nevada, Utah, Arizona, Texas and New Mexico, but not including Washington, as suggested in the brief for the Engineers' Committee (pp. 49, 57), for Southern Pacific has no lines in Washington), and it should have the same meaning and interpretation in all. If its interpretation were controlled by the law of the state in which performance took place, it might be given one meaning upon one part of an interstate run and a conflicting meaning on the remainder. The only true and reasonable conclusion is that the agreement provisions should be construed in

accordance with Federal law, rather than state law, if there should be any lack of harmony between the applicable state and Federal principles. We know of no such differences which would affect the present case, and none has been suggested by any party.

(c) What Bearing, If Any, Does the Norris-La Guardia Act Have Upon the Propriety of Granting the Relief Sought?

We think that the short answer to this question is that the Norris-LaGuardia Act has no bearing whatsoever in Cases Nos. 27 and 41.

The reasons may be summarized as follows:

(i) The statute in question relates to and conditions only the issuance of injunctions or restraining orders. No such relief is sought in this proceeding.

(ii) None of the acts complained of, or alleged by the Engineers' Committee to be unlawful, comes within the classification as to which it is provided in Section 4 of the Act that no injunction or restraining order shall issue. Therefore, even if an injunction had been sought herein, this section would not operate as a barrier.

(iii) The decision in the *Virginian case* clearly indicates, as stated above, that the Act does not operate to deny injunctive relief to a labor organization otherwise entitled thereto as a means of protecting its rights as the craft representative.

CONCLUSION

For all of the reasons above set forth, the judgment and decree of the trial court, modified only by the agreed addition of Finding 11(a) as part of Paragraph b thereof, should be affirmed.

Dated: San Francisco, California,
September 30, 1943.

Respectfully submitted,

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